

In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the facility does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of VA medical center of jurisdiction will immediately report this to the VA Network Director (10N 1-22), Chief Network Officer (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) and State official authorized to oversee operations of the State home.

(Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

§ 51.31 Automatic recognition.

Notwithstanding other provisions of this part, a facility that already is recognized by VA as a State home for nursing home care at the time this part becomes effective, automatically will continue to be recognized as a State home for nursing home care but will be subject to all of the provisions of this part that apply to facilities that have achieved recognition, including the provisions requiring that the facility meet the standards set forth in subpart D and the provisions for withholding per diem payments and withdrawal of recognition.

Subpart C—Per Diem Payments

§ 51.40 Monthly payment.

(a)(1) VA will pay per diem monthly for nursing home care provided to an eligible veteran in a facility recognized as a State home for nursing home care. During Fiscal Year 2000, VA will pay the lesser of the following:

(i) One-half of the cost of the care for each day the veteran is in the facility; or

(ii) \$50.55 for each day the veteran is in the facility.

(2) Per diem will be paid only for the days that the veteran is a resident at the facility. For purposes of paying per diem, VA will consider a veteran to be a resident at the facility during each full day that the veteran is receiving care at the facility. VA will not deem the veteran to be a resident at the facility if the veteran is receiving care outside the State home facility at VA expense. Otherwise, VA will deem the veteran to be a resident at the facility during any absence from the facility that lasts for no more than 96 consecutive hours. This absence will be considered to have ended when the veteran returns as a resident if the veteran's stay is for at least a continuous 24-hour period.

(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10-5588, State Home Report and Statement of Federal Aid Claimed. This form is set forth in full at § 58.11 of this chapter.

(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA Forms 10-10EZ, Application for Medical Benefits, and 10-10SH, State Home Program Application for Care—Medical Certification, at the time of admission and with any request for a change in the

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level of care (domiciliary, hospital care or adult day health care). These forms are set forth in full at §§ 58.12 and 58.13 of this chapter, respectively, of this part. If the facility is eligible to receive per diem payments for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph, except that VA will pay per diem from the day on which the veteran was admitted to the facility if the completed forms are received within 10 days after admission.

(b) Total per diem costs for an eligible veteran's nursing home care consist of those direct and indirect costs attributable to nursing home care at the facility divided by the total number of patients at the nursing home. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A-87, dated May 4, 1995, "Cost Principles for State, Local, and Indian Tribal Governments."

(Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

§ 51.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the veteran needs nursing home care and the veteran is within one of the following categories:

- (a) Veterans with service-connected disabilities;
- (b) Veterans who are former prisoners of war;
- (c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;
- (d) Veterans who receive disability compensation under 38 U.S.C. 1151;
- (e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;
- (f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for nursing home care is provided for in the judgment or settlement described in 38 U.S.C. 1151;
- (g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);
- (h) Veterans of the Mexican border period or of World War I;

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(i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Persian Gulf War, as provided in 38 U.S.C. 1710(e);

(j) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g).

(Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

Subpart D—Standards

§ 51.60 Standards applicable for payment of per diem.

The provisions of this subpart are the standards that a State home and facility management must meet for the State to receive per diem for nursing home care.

§ 51.70 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The facility management must protect and promote the rights of each resident, including each of the following rights:

- (a) *Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.
- (2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility management in exercising his or her rights.
- (3) The resident has the right to freedom from chemical or physical restraint.
- (4) In the case of a resident determined incompetent under the laws of a State by a court of jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.
- (5) In the case of a resident who has not been determined incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.